

Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KATHY WALKER,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. C09-1750JCC

ANSWER TO COMPLAINT

Defendant, United States of America ("the United States"), by and through its undersigned counsel, hereby answers Plaintiff's Complaint for Release of Personal Property as follows.

RESPONSES TO SPECIFIC ALLEGATIONS IN THE COMPLAINT

Using the same paragraph numbering as the Complaint, the United States answers Plaintiff's specific allegations as follows:

1. Paragraph 1 states a conclusion of law, and therefore the allegations are denied.
2. Admit, except the defendant lacks knowledge sufficient to form a belief as to the zip code in which plaintiff resides, and therefore denies the same.

3. There was no paragraph 3 in the complaint.

4. Admit.

5. Admit Dimitrius Tinsley was arrested, charged with drug related charges, and later pleaded guilty in Case No. CR09-235MJP. Deny all remaining allegations.

6. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6, and therefore denies the same.

7. Admit personal property was seized during the search on July 21, 2009. Deny all remaining allegations.

8. Deny.

9. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations of paragraph 9, and therefore denies the same.

10. Deny to the extent that paragraph 10 states a legal conclusion. Admit that no written notice of a judicial forfeiture action was sent to plaintiff between July 21, 2009 and the date of the filing of the complaint, but affirmatively alleges that written notice of the forfeiture of a number of items of personal property has since been sent to plaintiff and to her counsel in the ancillary proceeding in U.S. v. Dimitrius Tinsley, WDWA Case No. CR09-255MJP. All remaining allegations of Paragraph 10 are denied.

Defendant denies that plaintiff is entitled to the relief requested or to any relief whatsoever.

Defendant denies any allegation that is not specifically admitted in this Answer.

DEFENSES

The defendant United States asserts the following affirmative defenses:

A. The complaint fails to state a claim of upon which relief can be granted, and should therefore be dismissed.

B. The Court lacks subject matter jurisdiction over this action.

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1 C. The allegations of the Complaint sound in equity; however, plaintiff has an
2 alternative remedy at law, the opportunity to challenge the forfeiture of the seized assets
3 in the ancillary proceeding in Case No. CR09-255MJP. This civil action therefore should
4 be dismissed on that basis.

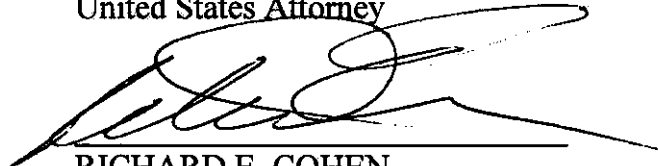
5 D. Any alleged failure to give notice or to return any property have been cured
6 by entry of a Preliminary Order of Forfeiture entered in U.S. v. Dimitrius Tinsley, Case
7 No. CR09-255MJP, in which the Court also ordered the seizure of certain items of
8 property that therefore are lawfully being held by the United States pending conclusion of
9 the ancillary proceeding in the criminal case.

10 The United States respectfully requests the Court, dismiss Plaintiff's Complaint
11 and this action with prejudice, and award Defendant its costs and such other relief as the
12 Court may deem appropriate.

13 DATED this 5th day of February, 2010.

14 Respectfully Submitted,


15 JENNY A. DURKAN
16 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the parties.


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